UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PROJECT VERITAS, et al.,

Plaintiff(s),

23 CV 4533 (CS)

-vs-

TELECONFERENCE

JAMES O'KEEFE, et al.,

Defendant(s).
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Proceedings recorded via digital recording device

United States Courthouse
White Plains, New York

May 31, 2024

Before: THE HONORABLE CATHY SEIBEL,
District Judge

A P P E A R A N C E S:

RANDAZZA LEGAL GROUP, PLLC
Attorneys for Plaintiffs
BY: JAY M. WOLMAN

CHILDERS LAW, LLC
Attorneys for Defendants
BY: SELDON J. CHILDERS
NICK WHITNEY

ALSO PRESENT:

JOSEPH BARTON, Project Veritas Action Fund
Client Representative

THE DEPUTY CLERK: Good afternoon, Judge.

Judge, this matter is Project Veritas v. O'Keefe. We have on the line representing Plaintiff Mr. Jay Wolman, and also on is a client representative for Project Veritas, Mr. Joseph Barton, and we also have on representing Defendant Mr. Jeff Childers, and Anthony's on the line as well.

THE COURT: All right, good afternoon, I guess it is, to you all.

Let me ask you when you speak to please say your last name and only your last name first. Please do not say, "this is Jay Wolman for Plaintiff." Just say "Wolman." That way, I'll know right away who's speaking and I don't have to interrupt you to ask, and if we ever need to transcribe the conference, the transcriber will also know.

So we have sort of two motions flying around. I originally set this conference as a pre-motion conference regarding Defendant's motion to compel, which they filed without a pre-motion conference, so I wanted to have this conference first, and I now have Plaintiff's May 24th letter on that subject. And then, in the meantime, Plaintiff has filed a motion for a preliminary injunction, so we need to set a schedule for all of that.

With respect to the motion to compel arbitration, the provision in Paragraph 23 is a bit of a head scratcher because it says basically everything relating to the agreement goes to

arbitration, but notwithstanding that, Plaintiff can seek a preliminary injunction to restrain any actual or threatened breach "in addition to any and all additional remedies available at law." If that means what it literally looks like, then the whole clause makes no sense, so what that means somebody with knowledge is going to have to explain.

Because if what you're saying is we're all -- everything is going to arbitration except the Plaintiffs can go to court for an injunction and also go to court for anything, then everything that comes before it is nonsensical, so I'll be interested to see what the explanation is for that. The -- but the -- whether or not the damages claims have to be arbitrated, even if they do, Plaintiff is still entitled to get an injunction here. I don't mean they're necessarily entitled to an injunction, but they're entitled to ask for it here.

But what has me puzzled about that motion is, this is old news. I mean, this -- the conduct that you're asking me to enjoin has been going on for over a year, and I can't really understand why Plaintiff made the motion now except as a tactic. Which doesn't make it wrong, it just makes it a tactic.

Is there something that's -- some sort of new harm that's imminent? That prompted the motion?

MR. WOLMAN: And I apologize, your Honor, I'm not going to be used to just saying my first name -- my last name first, so bear with me.

First, I want to just correct the introduction. It's -- Mr. Barton is here for Project Veritas Action Fund.

As to the interpretation of the arbitration agreement, we don't believe that it is nonsensical, but, rather, is limited. For example, had Project Veritas or Project Veritas Action Fund simply brought a claim for indemnification, that would be arbitrable. It would go straight to arbitration. There would be no injunctive relief sought. It's just a straight-up claim for money, money damages. It's not affected by the carveout for injunctive relief.

Project Veritas need not have been in a situation where it was seeking injunctive relief for the harms, but this does bring us to the other motion. The harms are ongoing. Project Veritas --

THE COURT: I'm sorry, before we leave Paragraph 23, I'm still baffled by that language, "in addition to any and all additional remedies available at law." But what does that mean?

MR. WOLMAN: From the way I read it and I understand it, it means that if we are seeking a preliminary or final injunction in court, we may also ask the Court in that proceeding for whatever other remedies at law are available. If were are not seeking a preliminary or final injunction, then any claims at law for money damages must be arbitrated.

THE COURT: And is it kosher that only -- under this agreement only your team has that benefit?

MR. WOLMAN: This was an agreement negotiated between Mr. O'Keefe, who was running Project Veritas and Project Veritas Action Fund at the time. This is not, you know, something that was thrust upon him. He had a full and fair opportunity to consider it and he agreed to these terms, and I don't believe that the Federal Arbitration Act or New York law makes -- requires that there be reciprocal rights under an arbitration agreement.

THE COURT: Mr. Childers, do you want to say anything about what that...Paragraph 23(c) means? Or, actually, it's a B; there is no C.

MR. CHILDERS: Yes, your Honor, thank you.

So I don't -- I think -- we're reading this as a pretty standard example of contractual interpretation where you have a more general clause and then a more specific one, so, as your Honor pointed out, 23(a) provides for the mandatory broad arbitration requirement for any and all claims related to and so forth, and then in 23(b), and this is fairly common in these kinds of arbitration provisions, there's the carveout for injunctive relief, with the obvious rationale being that if there's an emergency, you don't have time to negotiate, you know, finding an arbitrator and doing all that stuff and you just need to go into court and get your injunction to negotiate, so I think we have to read 23(b) in light of that standard contractual rationale.

And then, because the clause that we're all focusing on right now, that final subjective clause at the end of 23(b), it follows that, all the prior language, and so I think the reasonable and logical reading is that it -- the relief that's applied gets narrower and narrower through that sentence and that that final clause doesn't somehow explode and, and consume everything in front of it.

So I think that it was inartfully worded, but it can be compared to very standard, similar language in these provisions where what they're saying is, and this is how we read it, that if Project Veritas does need to seek a preliminary and/or final injunction to enforce the restrictions and obligations or restrain any actual or threatened breach, then they can get that order and they don't want to be restricted to what the Judge can include in that injunction order.

So if there's any additional relief that the judge feels is appropriate or comes out as, you know, ancillary or secondary relief to the injunction, then that relief would be available to Project Veritas, and that's, I think, the only way you can read that and have both paragraphs work harmoniously with each other.

THE COURT: Hmm.

MR. WOLMAN: May I respond, your Honor?

THE COURT: Yeah.

MR. WOLMAN: What my colleague is arguing is that it's

a standard carveout for emergencies. It is not. It doesn't say that. It says explicitly a preliminary and/or final injunction, meaning we need not seek a preliminary injunction, we could litigate a case through jury and get a final injunction, a permanent injunction, on a matter, and so therefore it makes sense that if you're going to go that far, then, of course, you would bring along with it the other disputes.

THE COURT: Well, I'm going to wait and see what authority you cite in your brief and what arguments you make, but sitting here now, Plaintiff's interpretation makes a little more sense to me, but, like I said, I'm not deciding anything yet.

You were about to move on to the PI, Mr. Wolman.

MR. WOLMAN: Yes, your Honor. Thank you.

The -- as to the preliminary injunction, this case has had an unusual procedural history. It took us some effort to serve all of the Defendants and the parties were attempting to negotiate and even went to court-annexed mediation, and so as to the timing of the motion, after all that time, it was our anticipation that the Plaint -- the Defendant, rather, Mr. O'Keefe at OMG, would be answering the complaint or otherwise moving to dismiss.

And on a substantive basis, we were not anticipating that the response deadline that they sought would be to move to compel arbitration after all this time, and so we had,

therefore, waited until that deadline to see what the substantive response would be, so that way, it could be addressed in our motion for preliminary injunction, which necessarily would require us to show a substantial likelihood of success on the merits, and it seemed logical to wait just a little longer to find out what the arguments were so that they could be addressed and we wouldn't have cross-motions that didn't consider each other.

So that's why the timing is now. There is no tactical --

THE COURT: But don't you need to show, don't you need to show imminent irreparable harm? And, like, now this has been going on at -- whatever it is you're trying to enjoin has been going on for at least since April and maybe -- two Aprils ago and maybe before that.

MR. WOLMAN: Yes, but we had hoped to resolve it amicably and --

THE COURT: Well --

MR. WOLMAN: -- our good faith should not be held against us.

THE COURT: Well, nobody's holding it against you, but it might make it harder to show that you need emergency relief. Part of what you're asking, the part about soliciting and contacting and all that, is only applicable, as I understand it, for a year, and isn't the year up?

MR. WOLMAN: The year is up, yes, but to the extent that it's a continuing course of conduct, you know, he shouldn't be profiting off of his --

THE COURT: You might get, you might get damages for it, for the -- if the Defendant breached that provision during the year it was in effect, you might well be entitled to damages for it, but I don't think you get an injunction for it. There are other parts of what you're asking for that don't have that one-year limitation.

And I have to say, I looked at the texts that you cite, and it's not as clear to me as it is to you what's actually going on there. It looked to me -- and this could be completely wrong and this is, this is why we have hearings, but it looks to me like these conversations are occurring after there's been a split between Mr. O'Keefe and the Board and now the donors are lining up either with Team O'Keefe or Team Board.

And...you know, if the information that is being assembled relates to people who Mr. O'Keefe already knew about and already knew who -- that they were donors and already knew who they were and how to reach them because, you know, he worked with them and all that, then what makes it a trade secret?

MR. WOLMAN: Because they weren't his to take with him. He developed that information in the course and scope of his employment. All of that information belongs solely to Project Veritas and/or Project Veritas Action Fund. It does not

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THE COURT: Well, your, your affidavits say basically, without explaining why, that -- let me find it, that...and I can't say I pored over these for hours, but I did see that the affiants basically said -- like, the only way O'Keefe would have this information is from working here, from working for Project Veritas, which, you know, may be true, but I don't know what the basis for that collusion is.

The...let me find the -- yeah, they say the only way O'Keefe and OMG had these donors' contact information was because it was part of a confidential list kept by Project Veritas. I -- that sounds right as to donors who were unknown to him before he started working there, but are all those in that category. That seems like it has to be part of what you have to prove, and, you know, you don't have to prove your whole case in your papers, but that was something that jumped out at me.

MR. WOLMAN: Right. And, your Honor --

THE COURT: Sometimes you bring in a CEO because of the CEO's connections, so if the people who were taking his side weren't people he learned of through his employment, but people he knew beforehand, then it seems like it's not a trade secret. But --

MR. CHILDERS: Childers, your Honor.

THE COURT: I'm sorry, go ahead.

MR. WOLMAN: Excuse me. We're happy to work with Mr. O'Keefe, as I was saying, with respect to anyone he knew beforehand, like, for example, his father, but he was the one out there on behalf of Project Veritas generating donors. He had to request from Ashra Bolton the donor list.

Any ones that he otherwise knew, it could be analogized, your Honor, to a scientist who comes up with a secret formula in the course and scope of their employment, they can't suddenly just go to a new company with the secret formula because they have it in their head.

THE COURT: Well, that's certainly true. On the other hand, if, you know, there -- they also are allowed to keep their knowledge of chemistry that they have before they went to work for Coca-Cola and put that knowledge to work.

I mean, look, all this just shows that the devil is in the details, as, as is usually the case, I'm not making any, any decisions today, but, you know, the -- it does look like Mr. O'Keefe is asking his assistant to assemble information. It doesn't look like there's a pre-existing donor list that he downloaded, but it does look like he's asking somebody who's still there to find details about these people.

So why would, why would that be okay, Mr. Childers?

MR. CHILDERS: Thank you, your Honor.

With regard to what the assistant may or may not have provided Mr. O'Keefe, you know, I think we're going to get into

that in discovery and find out if she even sent him anything, and, if so, what it contained and if he did anything at all with it. I think those are all factual issues that are undeveloped.

With regard to the trade secret claim, however, I find that is very interesting. I think that's a really good metaphor for the case at large, because what this case is really about, your Honor, is the lack of a non-solicitation clause and the lack of a non-compete clause in Mr. O'Keefe's employment contract, and so what they're doing, the reason why these claims are so attenuated, is that they're trying to manufacture these missing restrictive covenants that, I guess, in hindsight, they probably wish they had gotten and didn't.

I've litigated lots of trade secret cases, I'm sure your Honor has seen a ton of them, and, you know, I look forward to ultimately arguing, whether it's in your Honor's courtroom or with an arbitrator, whether the bare knowledge of the existence of a donor could possibly be a trade secret. I, I have some fairly profound questions about that.

THE COURT: Well, I don't think they're saying the knowledge of the existence is a trade secret, but he seems to be asking for -- she seems to be creating a document that has -- it's hard to see in the screen shots, but she seems to be creating a document that contains information about at least some donors. Whether it's just the ones that are going to be on Team O'Keefe or all of them, hard to tell, but it looks like

he's asking her to document all the donors who want money back, so I, you know, there is a bit of a mystery there, and it'll be cleared up either in discovery or if we have a PI hearing. Right now, let's set a schedule.

The Defendants' motion to arbitrate, to compel arbitration, was already filed, so you can -- I, I think probably the way to do it is for Defendant to re-file that motion. Then Plaintiff can oppose and cross move for a PI.

I mean, I know you've already made the motion, but scheduling-wise, that you -- the Plaintiff would oppose the motion to arbitrate and then the Defendant would reply on the motion to arbitrate and oppose the PI motion, and then the Plaintiff could reply on the PI motion. I would rather do it that way, you know, sort of pretending they're cross-motions, because that way, you guys write and I read four briefs instead of six. If, if we put the two motions each on their own individual tracks, you write and I, and I read six briefs.

So timing, I assume that Plaintiff -- excuse me, Defendant can re-file his motion to arbitrate, you know, today. Or Monday.

MR. CHILDERS: Your Honor, I did have a question that was on my list to ask that relates directly to that issue, and the issues have been developed a little bit more through the -- this process of the letter in opposition and so forth, so I would probably want to tweak our motion a little bit to make it

clearer and address some of the things that have come up in oral argument and in the Plaintiff's response and then maybe Plaintiffs could have its chance to respond to that and oppose, so I would just want a little bit more time, maybe, to do that?

And I'm out the next week and a half, starting halfway through next week, on summer holiday with the family.

THE COURT: All right, well, then, let's do this. The PI motion has been filed, so that, that can be the first motion, and so we'll set a date for Defendants' opposition to the PI motion and Defendants' motion to compel arbitration, and then we'll set a date for Plaintiffs' reply on the PI and opposition on the motion to compel and then a date for Defendants' reply on a motion to compel.

So you're away -- see, I don't like to ruin people's vacations. So you're away basically through June 14th? Is that what you said? Or June 16th?

MR. CHILDERS: First day back in the office will be the 17th, your Honor.

THE COURT: All right, so when can you oppose the PI motion and file the motion to arbitrate?

MR. CHILDERS: Two weeks would be great, but if your Honor is concerned about the timing, then I would suggest Friday the 21st.

THE COURT: That's just four days.

MR. CHILDERS: The 28th would be much better.

THE COURT: Well, let me just think out loud, and I'm concerned about my vacation as well. If we're going to have -- let's see, the 28th and then if Plaintiff wanted the same couple of weeks, that would take us to the 12th...that should be okay. I'm turning into a pumpkin on August 2nd, but if -- let's just play this out.

If Defendants' opposition and cross-motion is June 28th, then, Mr. Wolman, could you oppose the motion to compel and reply on the PI by two weeks after that? Which would be July 12th?

MR. WOLMAN: Yes, I believe so, your Honor, but one thing I would ask is because, for example, the motion to compel arbitration was itself 20 pages and a PI motion, I don't remember how long mine was, but they tend to be rather long norm -- and if we're going to be doing these combined responses, I would ask probably, and I'm sure Mr. Childers would agree, a little more liberty on the page limitations.

THE COURT: All right, 35 for the Defendants' combined opposition to the PI motion and the Defendants' motion to compel arbitration, 35 for Plaintiffs' combined reply on the PI and opposition on the motion to compel, which will be due July 12th, and then Defendants' reply on the motion to compel would be July 19th.

And if we need a hearing, we would have to do it either the week of July 22nd or the week of July 29th or it

would have to be in the end of August, and that is really -- that would turn on, I guess, two things. One is how long you think a hearing would be and whether you folks think you can be ready that soon after the briefing or if you would rather do it at the end of August as opposed to the end of July.

MR. CHILDERS: The end of August is probably better for me as well when, you know, the, the summer is always difficult with everybody's vacation schedule, staff, and so forth. That would be my vote.

MR. WOLMAN: You know, I, you know, would prefer to do it towards the end of July, just because school then starts up towards the end of August and camps are over and just getting into court and planning for a particular day for a lengthy argument is a little more harrowing for that.

THE COURT: How long do you think a hearing would take? What do you think the -- and I know it's a little hard to tell until you see the opposition, but are we talking about, you know, Mr. O'Keefe testifying and one or two people from Plaintiff testifying, or are we talking -- so a day? Or are we talking about, you know, three days?

MR. WOLMAN: I guess it depends upon what the response would be, your Honor.

THE COURT: Let's do this -- how about we do this, why don't we pick a day -- of course, this is subject to what Mr. Clark can find, but why don't we pick a day during the last week

of July, if I have one, and if that turns out to be not enough time, then we'll finish toward the end of August.

Do we have a day that works, Walter?

THE DEPUTY CLERK: Just give me one moment, Judge.

THE COURT: And if it turns out that there is -- you know, there's a legal reason why I don't think we need a hearing, obviously, I'll tell you that as soon as I reach that conclusion.

THE DEPUTY CLERK: Judge, July 22nd is wide open for the Court.

THE COURT: That's a little tight for me.

THE DEPUTY CLERK: That's a little tight? Okay, I'm sorry.

THE COURT: The briefing isn't going to be done until July 19th.

THE DEPUTY CLERK: Okay.

THE COURT: I was looking at the following week.

THE DEPUTY CLERK: Okay, Judge.

THE COURT: The 29th looks all right, too.

THE DEPUTY CLERK: Yeah, Judge, July 29th is good for the Court.

THE COURT: All right, July 29th.

Let me make one more suggestion.

Now, both sides are really starting to spend real money and real time, and I know you tried with Judge Krause and

he's an incredibly patient man, so if he, if he was fed up, I'm sure there's a good reason for that. I don't think either side here really wants to make litigating this case their jobs and it is going to be their jobs for the next few months and beyond, so if there's -- you think there is any room for movement from where you were last time, I understand these -- I'll call it a business divorce even though it's a -- not a typical business. I know these business divorces tend to get very personal, but maybe it's time to start on both sides maybe being a little more flexible to avoid all this work and all this expense.

Does anybody think that that makes sense at this point, or is the blood so bad that everybody's willing to sink a lot of time and treasure into what is now going to be a pretty intense litigation over the next couple of months?

MR. CHILDERS: Your Honor, we're -- we continue to be open to a consensual resolution.

MR. WOLMAN: We are, you know, amenable to discussing, but not based upon the terms anywhere near what was last proposed.

THE COURT: Well, that's the question.

MR. WOLMAN: Right.

THE COURT: You know, are --

MR. WOLMAN: So we would --

THE COURT: -- is the possibility on either side.

MR. WOLMAN: We would need an indication that there

would be substantial movement from Mr. O'Keefe before we resume mediation.

THE COURT: Well, Mr. Childers, I'll -- are you talking about dollar-wise or other forms of relief?

MR. WOLMAN: Well, those can be balanced against each other, your Honor.

THE COURT: All right. Well, you know, 'substantial' is always -- it means different things to different people, but if Mr. O'Keefe would prepare to -- would prefer to get on with his, his work and his new entity and is willing to give a little to restart the conversations, even if the opening gambit doesn't meet Mr. Wolman's definition of substantial, if it's significant enough to get the conversation going again, I think it's worthwhile.

So, Mr. Childers, I hope you will pass that on to your client and I'm sure you understand and will make him understand, you know, what -- that going forward, this is going to take up a lot of his time, and if you get conversations going and you think you're getting closer and you want to pause this schedule or push it out to complete those conversations, I'm usually amenable to that, but that's only if you really think you're getting somewhere, so it sounds like the ball's in Mr. O'Keefe's court.

And, Mr. Childers, I'm sure you'll reach out to Mr. Wolman if there's something to discuss.

MR. CHILDERS: Hundred percent, your Honor. Thank you.

THE COURT: Anything further we should do this morning?

MR. WOLMAN: I don't believe so.

THE COURT: All right. I will look for your papers if your discussions don't get anywhere, and I will see you in a couple of months.

MR. WOLMAN: Thank you, your Honor.

MR. CHILDERS: Thank you, your Honor.

THE COURT: Thank you. Bye-bye.

Certified to be a true and accurate transcript of the digital electronic recording to the best of my ability.

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Tabitha R. Dente, RPR, RMR, CRR

U.S. District Court

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